IN THE HIGH COURT OF UTTARANCHAL IN NAINITAL

Writ Petition No. 146 (S/B) of 2006

Km. Vinita Verma D/o late Sri D.L. Verma,
R/o Narsinghbari near Nar Singh Mandir,
Almora District Almora

....Petitioner

Vs

1. State of Uttaranchal through Principal Secretary Tourism Department, Govt. of Uttaranchal Dehradun
2. Director Tourism Uttaranchal Dehradun
3. Chief Executive Officer, Uttaranchal Tourism Development Board, Patel Nagar, Dehradun

...Respondents

Dated: July 19, 2006

Sri Manoj Tewari, Advocate, learned counsel for the petitioner
Ld. Standing counsel for the State
Sri Sudhanshu Dhulia, Sr. Advocate, ld. counsel for Respondent No. 3

Hon'ble P.C.Verma, J.
Hon'ble B.S.Verma, J.

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the impugned order dated 27.4.2006 passed by Respondent No.3 (Annexure No. 15 to the writ petition).

2. The petitioner was substantively appointed and is working in the Education Department as an Assistant Teacher in L.T. Grade. Thereafter, 11 posts of District Adventure Sports Officer were advertised vide advertisement dated 7.11.2004 (contained in Annexure No. 4 to this writ petition) wherein it was specifically provided that the appointment shall be given on the contract of Rs.15,000/- per month and these posts shall be only for a period of five years and the contract shall be renewed annually. The petitioner applied in terms of the

said advertisement on the post of District Adventure Sports Officer and was selected on the consolidated salary of Rs. 15,000/- per month. After holding the selection by the Selection Committee, a merit list was prepared wherein the petitioner was placed at Sl. No. 1 amongst O.B.C. category candidates and the petitioner was given appointment as District Adventure Sports Officer vide order dated 8.9.2005. After her appointment, petitioner sought permission from Joint Director of Education, Kumaon Region, Nainital to join duties on the post of District Adventure Sports Officer. The Joint Director of Education granted permission vide order dated 27.10.2005 and pursuant to the said order, the Head Mistress of Institution relieved the petitioner in the afternoon of 3.11.2005. On 5.11.2005, the petitioner reported for duty and gave her joining report alongwith stamp papers as required by the order of appointment dated 8.9.2005.

3. Vide letter dated 1.2.2006, the petitioner was informed by the Joint Director of Tourism that the post of District Adventure Sports Officer is a contract post and there is no provision for appointment on deputation, therefore, the petitioner was required to submit her resignation after its acceptance by the competent authority in the education department within a week by the aforesaid letter dated 1.2.2006. Since the petitioner did not furnish the accepted resignation from the Education Department within the time stipulated, the order of appointment has been withdrawn by the impugned order.

4. Learned counsel for the petitioner has assailed the order impugned on the ground that before passing of this order though the petitioner had joined her duties on

5.11.2005 however no work was assigned to her and she was also not paid salary till the date of passing of the order and the order has been passed without affording any opportunity to the petitioner. The order required by the Chief Executive Officer, Uttaranchal Tourism Development Board to submit the resignation duly accepted by the competent authority was not a condition notified in the advertisement. Learned counsel for Respondent No. 3 submitted that since the post of District Adventure Sports Officer is not a post to be filled up by appointment taking persons on deputation. It was an appointment on contract basis and it is admitted that the petitioner was working as L.T. Grade Assistant Teacher, therefore, she cannot maintain her lien at two places in a Government service. Other persons who have been taken on contract basis after selection in pursuance of the said advertisement, they have joined the service on contract after resigning from their parent department.

5. Admittedly, the post of District Adventure Sports Officer was to be filled up on contract basis for five years. It was a tenure post for which appointment on contract basis was to be made and only Rs. 15,000/- was to be paid for the service rendered. Since this post is not a substantive post, therefore, the appointed person on this post cannot hold any lien. Thus, the submission of the ld. Sr. Advocate Sri S. Dhulia is misconceived that the petitioner cannot hold lien at two places. The petitioner may avail five years' leave from her parent department and can serve on contract basis if she is willing to serve by maintaining her lien in her parent department and she can discharge her duties in terms of the contract. Therefore, the cancellation on the ground of want of resignation and its acceptance is wholly illegal.

6. Learned counsel for Respondents No.3 further submits that there is no provision in any service rule of the State of Uttaranchal that any employee can work in any department without resigning in the parent department unless it is not deputation. This argument is nothing but repetition of earlier argument which we have said to be misconceived for the reason that firstly the appointment of the petitioner vide order dated 8.9.2005 on contract basis which was Rs. 15,000/- per month does not create any lien on the tenure appointment and it is settled law that while maintaining lien in one department, an employee can serve in another department by taking leave without pay which is called extra ordinary leave for tenure appointment.

7. Learned counsel for the petitioner submitted that no contract has been executed and only the appointment letter has been issued to the petitioner. On the other hand, learned counsel for Respondent No. 3 submitted that the petitioner submitted the contract duly filled in by her and signed by her in the department concerned. Be that it may, the advertisement was made by the Respondent No. 3 which is an offer for which the petitioner applied and was selected and appointment letter was issued and that means to acceptance of offer which constitutes a contract. Now, the formality of written contract is left, therefore, the argument of ld. counsel for Respondent No. 3 that there is no contract is misconceived and is accordingly rejected.

8. In view of the above, the order dated 27.4.2006 passed by Respondent No. 3- Chief Executive Officer, Uttaranchal Tourism Development Board, Dehradun is hereby quashed. The petitioner shall be allowed to

continue and shall be paid the salary from the date of her joining alongwith arrears.

9. The writ petition is allowed accordingly. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

Rajeev Dang